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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 68]

नई दिल्ली, बृहस्पतिवार, अक्तूबर 13, 2022/आश्विन 21, 1944

No. 68]

NEW DELHI, THURSDAY, OCTOBER 13, 2022/ASVINA 21, 1944

भारत निर्वाचन आयोग सचिवालय

अधिसूचना

नई दिल्ली, 30 सितम्बर, 2022

अ.आ. 68(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, निर्वाचन अर्जी संख्या 1/2019 के संदर्भ में मणिपुर उच्च न्यायालय, इम्फाल द्वारा तारीख 23 सितम्बर, 2022 के निर्णय एवं आदेश को एतद्वारा प्रकाशित करता है।

[फा. सं. 82/मणिपुर-वि.स./एन.ई.एस-II/2022]

आदेश से,

मधुसूदन गुप्ता, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 30th September, 2022

ON. No. 68(E).—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby publishes the judgment and order dated 23rd September, 2022, passed in the Election Petition No. 1 of 2019 by the Hon'ble High Court of Manipur, Imphal.

[F. No. 82/MR-LA/NES-II/2022]

By Order,

MADHUSUDAN GUPTA, Secy.

**IN THE HIGH COURT OF
MANIPUR AT
IMPHAL**

ELECTION PETITION NO. 1 OF 2019

Houlim Shokhopao Mate @ Benjamin, aged about 36 years,
S/O (L) H. Jamkhokhai Mate, resident of Tengenoupal
Village, P.O. & P.S. Tengenoupal, District Tengenoupal,
Manipur-795131.

..... **Petitioner**

-Versus-

1. Shri Lorho S. Pfoze, aged about 59 years, S/O Late
A. Sibopfoze, resident of Kayinu Village, P.O. & P.S.
Mao, District Senapati, Manipur – 795150
 2. Angam Karung Kom, aged about 63 years, S/O Late
Ashong Kom, resident of K.R. Lane, P.O. & P.S.
Porompat, District Imphal East, Manipur - 795005.
 3. Shri Hangkhanpau Taithul, aged about 55 years, S/O
(L) T. Doupu, resident of Singngat Hausa Veng, P.O. &
P.S. Singngat, Churachandpur District, Manipur -
795139.
 3. Mr. Ashang Kasar @ Wungnaoshang Kasar @
Wungnao Shang Kasar, aged about 43 years, S/O
Ngashathing Kasar, resident of Chadong Village,
P.O. & P.S. Litan, Kamjong District, Manipur
- 795145.
 4. Leikhan Kaipu, aged about 54 years, S/O Late Leikhan
Kokan, resident of Heikakpokpi Village, P.O.
Pallel, P.S. Machi, Machi Sub-Division, Tengenoupal
District, Manipur - 795135.
 5. Thangminlien Kipgen, aged about years, S/O Late
Thangpu Kipgen, resident of Haipi Village, P.O.
Kalapahar, Kangpokpi District, Manipur - 795122.
 6. Shri K. James, aged about 56 years, S/O Late K.
Ngatangmi, resident of Tangkhul Hundung Khullen,
P.O. Lamlong, P.S. Litan, Kamjong District, Manipur
- 795010.
- Presently residing at JIM
Blessing Home, Sangaiprou Mamang
Leikai, Airport Road, P.O. &
P.S. Singjamei, Imphal West District, Manipur
- 795008.

..... **Respondents**

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners	::	Mr. Sundeep Srivastava, Advocate
		Mr. Ashem Mohendro Singh, Advocate
For the Respondents	::	Mr. HS Paonam, Sr. Advocate
		Mr. B. R. Sharma, Advocate.
Dates of Hearing and reserving Judgment & Order		
::		8/06/2022, 9/06/2022, 17/6/2022,

11/07/2022, 13/07/2022, 9/07/2022,
22/07/2022, 25/07/2022 and
26/07/2022.

Date of Judgment & Order :: **23.09.2022**

JUDGMENT AND ORDER

(CAV)

This Election Petition has been filed by the petitioner under Section 100(1)(d)(i)&(iv) and under Section 100(1)(b) of the Representation of People Act, 1951 (for short, “*the RP Act*”) to declare that the election of the first respondent from 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha, 2019 as null and void and to declare that the petitioner is the duly elected Member in the 17th Lok Sabha, 2019 from 2-Outer Manipur (ST) Parliamentary Constituency under Section 101 of the RP Act.

2. The Returning Officer of 2-Outer Manipur (ST) Parliamentary Constituency notified the election schedule for a Member to the House of People (Lok Sabha) in No.2-Outer Manipur (ST) Parliamentary Constituency in the following manner:

(a) Last date for making nomination	:	25.03.2019
(b) Date of scrutiny of nomination	:	26.03.2019
(c) Last date for withdrawal of nomination	:	28.03.2019
(d) Date of poll	:	11.04.2019

3. Pursuant to the public notice, the petitioner and others have filed their nomination papers within the time specified and the Returning Officer thereafter published in the Official Gazette the list of the candidates contesting in the Lok Sabha Election, 2019 from No.2-Outer Manipur (ST) Parliamentary Constituency. The list of candidates notified is as under:

1. Houlim Shokhopao Mate @ Benjamin [BJP]
2. Lorho S. Pfoze [Naga People's Front]
3. Angam Karung Kom [Nationalist Congress Party]
4. Hangkhan pautaitul [Janata Dal – United]
5. Ashang Kasar @ Wungnaoshang Kasar @ Wungnao Shang Kasar [North East India Development Party]
6. Leikhan Kaipu [Independent Candidate]
7. Thangminlien Kipgen [National People's Party]
8. K. James [Indian National Congress]

4. Succinctly put, the facts are as follows:-

The petitioner has filed his nomination papers along with required documents duly sworn by an affidavit before the Returning Officer. Similarly, respondents 1 to 7 have also filed their nomination papers. He first filed his affidavit in Form

26 dated 21.3.2019 along with his nomination paper as a candidate sponsored by the Naga People's Front (NPF) before the Returning Officer. On 26.3.2019, during scrutiny, the Returning Officer abruptly and improperly accepted the nomination paper of the first respondent. According to the petitioner, there was no proper scrutiny as envisaged under Section 36(2) of the RP Act. The affidavit in Form 26 filed by the first respondent suffers from the following defects:

1. The first respondent kept Column 5 of Para 4 of the affidavit as blank as nothing is filled up in the relevant column.
2. The gross total value disclosed by the first respondent at Para 7-A(ix) showing Rs.52,23,704/- for self and Rs.2,35,648/- for spouse are not correct and misleading, thereby filing false affidavit.
3. The first respondent failed to disclose vital material information in his affidavit pertaining to his non-agricultural lands and other interest in immovable properties at Para 7-B(ii) and (v) despite having owning immovable properties at Kayinu Village, Mao, Senapati District, Manipur, thereby rendering his nomination as invalid and void.
4. The first respondent failed to disclose the relevant details for showing a sum of Rs.1,12,50,000/- at Para 7-B(vi) of his affidavit, thereby filed a false affidavit.
5. The first respondent also furnished misleading and false particulars/information at Para No.(9B)(f) of his affidavit, thereby failed to disclose the details of contracts entered into by private companies in which candidate or spouse or dependents have share.
6. The particulars disclosed in the affidavit at Part B, Para (11)8(A) for the candidate and his spouse are falsely shown to be only Rs.3,24,704/- and Rs.2,20,648/- respectively. These are contradictory the particulars entered at Part A of the same affidavit.
7. The particulars shown at Para No.(11)8B(iii)(b) of Part B of the affidavit is also false as the first respondent disclosed only a sum of Rs.80,00,000/- being the value of inherited immovable property at Part A, Para 7B(iv) of the affidavit.

5. According to the petitioner, the nomination paper filed by the first respondent should have been rejected by the Returning Officer, however, the Returning Officer improperly accepted the nomination of the first respondent, thereby allowing him to contest the election. Hence, the election of the first respondent to be the returned candidate is liable to be set aside.

6. Denying the averments in the election petition, the first respondent filed written statement stating that three nomination papers along with affidavits were submitted on various dates and since typographical mistakes were detected in first two nomination papers and affidavits, the third nomination paper and the affidavit in Form 26 dated 25.03.2019 were filed on 25.03.2019 and the said

nomination paper along with the said affidavit was accepted by the Returning Officer at the time of scrutiny.

7. It is stated that being proposed by Robert Tallu Maram, whose name is found at Serial No.4 in Part No.58 of the electoral roll for 48-Mao (ST) with 2-Outer Manipur (ST) Parliamentary Constituency, the nomination paper dated 25.03.2019 along with the duly sworn affidavit dated 25.03.2019 was submitted and subsequently, the same was accepted by the Returning Officer after examining the nomination paper in accordance with Section 36 of the RP Act. Based on the said nomination paper and the affidavit in Form 26 dated 25.03.2019, the first respondent was allowed to contest the election and was elected in the 17th Lok Sabha election from 2-Outer Manipur (ST) Parliamentary Constituency. It is stated that all the provisions of the RP Act and the mandatory instructions of the Election Commission of India were strictly complied with by the first respondent to the satisfaction of the Election Commission of India.

8. The first respondent denied the statement of the petitioner that he has failed to maintain true and correct account of all expenditures in connection with the election in violation of Section 77 of the RP Act and thereby committed corrupt practice under Section 123(6) of the RP Act. In fact, the mandate of Section 77 of the RP Act was complied with and details were furnished to the satisfaction of the Election Commission of India.

9. According to the first respondent, in the entry in the Bank Register in Part-C, due to inadvertent mistake, the date has been entered as 16.04.2019 instead of 16.05.2019 and that the last bank balance of the first respondent is Rs.5,83,782/-. Therefore, there is no conflict in the disclosure of the two documents, as the last transaction made was on 16.05.2019 and the closing balance on that day is Rs.5,83,782/- only. Further, all expenditures so incurred are explained and accompanied by bills and vouchers submitted to the satisfaction of the Election Commission of India.

10. It is stated that no one donated any amount exceeding Rs.10,000/- into the donation box in public rally held on 20.03.2019 and, as such, names and address of persons/entities making donation exceeding Rs.10,000/- could not have been disclosed in any case, as there were none. The first respondent or his agents have not committed any fraudulent acts or corrupt practices and have sincerely acted as per law and instructions to the utmost satisfaction of the Election Commission of India.

11. According to the first respondent, the nomination paper of the first respondent was rightly accepted by the Returning Officer in accordance with Section 36 of the RP Act and the improper acceptance of the nomination paper of the first respondent by the Returning Officer as pleaded by the petitioner is denied. Hence, the election petition is liable to be dismissed.

12. The petitioner filed replication stating that the first respondent may submit various nomination papers along with sworn affidavit in Form 26, however, the Returning Officer accepted the nomination paper along with affidavit in Form 26 dated 21.03.2019 and the said affidavit dated 21.03.2019 was uploaded at the official website of the Election Commission of India as per the guidelines of the Commission. It is stated that the affidavit dated 25.03.2019 was never affixed in a conspicuous place at the office of the Returning Officer for information of the electors relating to 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha as per Section 33A Clause 3 of the RP Act and also as per the instruction of the Election Commission of India dated 15.06.2009.

13. It is stated that the Returning Officer accepted the

affidavit dated 21.03.2019 after scrutiny. When scrutiny was held on 26.03.2019, the nomination paper dated 21.3.2019 along with Form 26 dated 21.03.2019 were the subject matter and the nomination paper dated 25.03.2019 and the affidavit were not the subject matter of scrutiny. After scrutiny, the nomination paper dated 21.3.2019 along with affidavit in Form 26 dated 21.03.2019 were uploaded in the official website and the voters could access the same from the website till date.

14. According to the petitioner, the Returning Officer abruptly and improperly accepted the nomination paper of the first respondent along with the affidavit dated 21.3.2019. As per the format provided, a candidate has to fill up/mention the name of spouse and dependents in Column 5 of Para No.4 of affidavit in Form 26, whereas in the instant case, the first respondent has failed to fill up the name of the spouse and dependents.

15. It is stated that as per the affidavit in Form 26 dated 21.3.2019 at Para No.7A(ix), the gross total value of assets of the first respondent should be Rs.53,24,704/- and his spouse should be Rs.3,70,648/-, whereas the first respondent showed it as Rs.52,23,704/- for himself and Rs.2,35,648/- for his spouse. The first respondent failed to open the bank account which is required to be opened one day ahead of filing his nomination paper along with his affidavit dated 21.03.2019 as per the mandatory instructions of the Election Commission of India. All account expenditures including the expenditure for buying nomination paper should be expended through his bank account opened specifically for the purpose of his election expenditure. There was no separate election bank account of the first respondent on 21.03.2019. The acceptance of cash exceeding Rs.10,000/- by the first respondent from the donors is against the mandatory instruction and is also illegal which amounts to corrupt practice.

16. Upon consideration of the pleadings, this Court framed the following issues:

1. Whether the affidavit in Form 26 filed under Rule 4A of the Conduct of Election Rules, 1961 by the Respondent No.1 suffers from defects of substantial character and if it is suffered from defects, then whether it would affect the result the Election of 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha 2019?
2. Whether the affidavit in Form 26 dated 21.03.2019 along with the Nomination paper was submitted by the Respondent No.1 before the Returning Officer, 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha 2019?
3. Whether the affidavit in Form 26 dated 21.03.2019 along with the Nomination paper was uploaded by the official of the Election Commission of India in its website www.ceomanipur.nic.in for accessing the same by the voters/electors or general public?
4. Whether the Respondent No.1 has failed to strictly follow the instructions of the Election Commission of India in

relation to separate Bank, election expenditure etc.? If failed what is its effect?

5. Whether the Respondent No.1 or his authorized agent in the election committed corrupt practice as defined under Section 123(6) of the Representation of People's Act, 1951? If yes, is it materially affected the result of the election of 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha 2019?
6. Whether the election of the Respondent No.1 as the Returned Candidate from 2- Outer Manipur (ST) Parliamentary Constituency in the General Election to the 17th Lok Sabha 2019 is liable to be declared null and void?
7. Whether the Election Petitioner is entitled to be declared as the Returned Candidate of 2-Outer Manipur (ST) Parliamentary Constituency in the 17th Lok Sabha Election 2019?

17. On the side of the petitioner, P.Ws.1 to 4 were examined and Exs.Z1 to Z16 have been marked. On the side of the first respondent, DWs1 to 7 were examined and Exs.D1 to D5/54 have been marked. Apart from marking the above exhibits, Exs.X1 to X7 and Exx.R1 to R5/32 were also marked.

18. Since Issue Nos.1 to 6 are intertwined and based on the same set of documents, they were taken up together.

Issue Nos.1 to 6:

19. The petitioner challenged the election of the first respondent stating that during scrutiny, the Returning Officer of 2-Outer Manipur (ST) Parliamentary Constituency abruptly and improperly accepted the nomination papers of the first respondent dated 21.03.2019. The petitioner pointed out that the first respondent kept Column 5 of Para 4 of the affidavit in Form 26 dated 21.03.2019 as blank; gross total value disclosed by the first respondent at Para 7-A(ix) is incorrect; material information pertaining to his non-agricultural lands and other

interest in immovable properties at Para 7-B (ii) and (v) despite owning immovable properties; failed to disclose the relevant details for showing a sum of Rs.1,12,50,000/- at Para 7-B (vi); false information at Para (9B)(f); falsely shown Rs.3,24,704/- and Rs.2,20,648/- respectively at Part-B, Para (11)8(A) for the candidate and his spouse; particulars shown at Para (11)8B(iii)(b) of Part B, as the first respondent disclosed only a sum of Rs.80,00,000/- being the value of the inherited immovable property at Part A, Para 7B(iv).

20. The case of the petitioner is that the first respondent has not complied with the prescribed format of Form 26, left certain columns blank, did not disclose the movable and immovable assets of himself, his spouse and his dependents, made false statements on oath and have concealed material facts in Form 26, which has materially affected the election of the petitioner. According to the petitioner, the returning officer ought to have rejected the nomination paper of the first respondent under Section 36(2) of the RP Act, as

withholding of important information, including his non-agricultural land and non-disclosure of contract details entered by the private company in which the first respondent has shares and furnishing various false information, are defects of substantive nature.

21. It is the case of the first respondent that three nomination papers along with affidavits were submitted on various dates. Since typographical mistakes were detected in the first two nomination papers and affidavits, the third nomination paper and the affidavit in Form 26 dated 25.03.2019 was filed and the said nomination paper along with the said affidavit was alone accepted by the Returning Officer at the time of scrutiny.

22. Admittedly, there is no specific issue framed qua filing of the third nomination paper dated 25.03.2019 and its acceptance by the Returning Officer. Since the first respondent raised an issue that the petitioner chose not to plead anything about the nomination paper and the affidavit dated 25.03.2019, for proper adjudication of the matter, this Court is inclined to address the same first.

23. Mr. Sundeep Srivastava, the learned counsel for the petitioner submitted that the Returning Officer accepted the nomination paper along with affidavit in Form 26 dated 21.3.2019 and only the said affidavit dated 21.3.2019 was

uploaded in the official website of the Election Commission of India. Moreover, the affidavit dated 25.03.2019 was never affixed in a conspicuous place at the office of the Returning Officer for the information of the electors/general public relating to the 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha as per Section 33 Clause 3 of the RP Act and also the guidelines/instructions of the Election Commission of India.

24. The learned counsel for the petitioner further submitted that the first respondent has violated the mandate of Sections 33 and 33A of the RP Act and has not complied with the prescribed format of Form 26, left certain columns blank, did not disclose the movable and immovable assets of himself, his spouse and his dependents, made false statements on oath and has concealed material facts in Form 26, which has materially affected the election of the petitioner.

25. Per contra, Mr. HS Paonam, the learned senior counsel for the first respondent submitted that there is no requirement of law that multiple nomination paper should be accompanied with the same affidavit in Form 26 and the argument is just a mere submission of the petitioner without any

basis whatsoever. The learned senior counsel added that a fresh revised affidavit in Form 26 is permissible in law. As such, the first respondent submitted a revised Form 26 dated 25.03.2019 along with his nomination paper dated 25.03.2019, which was accepted after proper scrutiny by the Returning Officer.

26. The learned senior counsel further submitted that due to technical problem, the Returning Officer was unable to upload more than one Form 26 of each candidate on the website and in this regard he made a reference to the chief-examination of the Returning Officer (DW7). According to him, the chief-examination of DW7 was not shaken during cross-examination by the counsel for the petitioner. Further, there is no contradiction about the requirement of the Election Commission of India to upload Form 26 within 24 hours from filing of the nomination paper by a candidate. He would submit that as far as the nomination paper and Form 26 dated 21.3.2019 submitted before the Returning Officer are concerned, the same has been displayed on the notice board and

uploaded within 24 hours from the time it was submitted. Therefore, the Form 26 dated 21.3.2019 has been uploaded latest by 22.3.2019

27. The learned senior counsel urged that, in his evidence, DW7 categorically stated that the subsequently filed revised Form 26 could not be uploaded as Form 26 dated 21.03.2019 was already uploaded on the website and, therefore, Form 26 dated 25.3.2019 could not be uploaded on the website. The learned senior counsel submits that the aforesaid evidence of the Returning Officer has not been disproved by the petitioner.

28. Admittedly, technical problem canvassed by the first respondent has not been proved. It is not the case of the first respondent that the contesting candidates involved in the case have also filed two or three Form 26. Further, the other respondents have not come forward and stated anything about the alleged technical problem alleged by the first respondent. In the absence of any proof, this Court cannot come to a conclusion that more than one affidavit in Form 26 cannot be uploaded.

29. The first respondent, in paragraph 10 of the written statement, stated that he had filed three nomination papers and since defects on the first and second nomination papers were detected, he filed third nomination paper, which is the correct

nomination paper. Admittedly, there is no record for the expenditure for filing the third nomination paper. Assuming without admitting, the submission of the first respondent is that the affidavit in Form 26 cannot be filed without withdrawing the incorrect affidavit in Form 26.

30. There is no record to show that the first respondent had withdrawn the first two nomination papers and filed the third one. The first respondent cannot file two or three different affidavits in Form 26 for filing nomination paper on different occasions without taking the permission of the authority concerned, if he thinks that the first two are defective. Moreover, the permission granted by the authority has not been produced.

31. In this regard, the cross-examination of D.W.7, who is the then Returning Officer of 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha 2019, is as follows:

Q1	:	What was your position in the office of the Returning Officer 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha Election, 2019?
Ans.	:	I was discharging my duty as Returning Officer of the 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha Election, 2019.
Q2.	:	Where are you presently serving/posted?
Ans.	:	Right now I am serving as Special Secretary, Health & Family Welfare, Govt. of Manipur and Project Director, MACS.
Q3	:	How many nomination papers can a candidate submit before the Returning Officer in the instant that of 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha Election, 2019?
Ans.	:	Under Sub-Section (6) of Section 33 of the Representation of People Act, 1951, a maximum 4 (four) Nomination Papers only can be presented by a candidate or on behalf of any candidate in the same constituency.
Q4.	:	How many Nomination Papers and Form-26 affidavit did the Returned Candidate submit before your good Office?
Ans.	:	I think 3 (three) Nomination Papers along with Form-26 affidavit were submitted by the Returned Candidate in the Office of the Returning Officer, 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha Election, 2019.
Q5	:	Were the said 3 (three) Nomination Papers along with Form-26 affidavit if submitted by the Returned Candidate displayed on the Notice Board in the Office of Returning Officer, 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha Election, 2019?
Ans.	:	Copies of all the Nomination Papers along with copies of Form-26 affidavits accompanying the

		Nomination Forms were submitted by the Returned Candidate displayed on the Notice Board in the Office of Returning Officer, 2-Outer Manipur (ST) Parliamentary Constituency in 17th Lok Sabha Election, 2019 on the same day nominations were filed.
Q6	:	What does Instructions/Guidelines of Election Commission of India says regarding publication of Nomination Papers of Candidates of 17th Lok Sabha Election, 2019 on their official website?
Ans.	:	All affidavits filed by the candidates shall be uploaded on the Election Commission of India's website within 24 (twenty four) hours soon after the candidate files the same. In the instant, the witness voluntarily states that however, we did face some technical issues in uploading more than 1 (one) affidavit for each candidate on the ECI's website.

32. The first respondent in his evidence and in the written statement admitted the filing of the nomination paper along with affidavit in Form 26 on 21.03.2019. Similarly, P.W.4., the then Additional Chief Electoral officer, Manipur in his evidence categorically stated the filing of nomination paper along with affidavit in Form 26 by the first respondent on 21.03.2019. The evidence of P.W.4 is also to the effect that the affidavit in Form 26 dated 21.03.2019 was placed in a conspicuous place for public view and was uploaded on the official website.

33. In the background of the evidence referred to above, when this Court viewed the official website of the Election Commission of India, it is seen that the nomination

papers submitted by the candidates for 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha, 2019 were duly uploaded. When this Court clicked the first respondent's nomination paper, this Court is able to see the affidavit in Form 26 dated 21.03.2019 and not the affidavit in Form 26 dated 25.03.2019 said to have been filed by the first respondent. Since affidavit in Form 26 dated 21.03.2019 of the first respondent was officially uploaded in the website of the Election Commission of India, this Court left with no other option except to look into the nomination paper and the affidavit in Form 26 dated 21.03.2019 of the first respondent and not the nomination paper and affidavit in Form 26 dated 25.03.2019, as the same was not properly disseminated and uploaded in the website.

34. On wading through the oral evidence and documents produced by the first respondent, it is clear that the Returning Officer accepted the nomination paper along with affidavit in Form 26 dated 21.3.2019 of the first respondent and the said affidavit was only uploaded in the official website. Since the Returning Officer accepted the affidavit in Form 26 dated 21.03.2019 and uploaded the same in the website of the Election Commission of India for deciding the matter further, the affidavit in Form 26 dated 21.3.2019 is referred to.

35. The defects pointed out by the petitioner in the affidavit in Form 26 dated 21.03.2019 are as under:

Column 5 of Para 4:

(4). Details of Permanent Account Number (PAN) and status of filing of Income Tax return.

Sl. No.	Names	PAN	The financial year for which the last Income-tax return has been filed	Total income shown in Income-Tax return (in Rupees) for the last five Financial Years (as on the 31 st March)
1.	Self	ASLPP2084L	N.A.	(i) (ii) (iii) (iv)(v))

2.	Spouse	AQRPM4140Q	N.A.	(i) (ii) (iii) (iv)(v))
3	HUF (If the Candidate is Karta or Coparcener)	N.A.	N.A.	(i) (ii) (iii) (iv)(v))
4.	Dependent-1	N.A.	N.A.	(i) (ii) (iii) (iv)(v))
5.	Dependent-2	N.A.	N.A.	(i) (ii) (iii) (iv)(v))
6.	Dependent-3	N.A.	N.A.	(i) (ii) (iii) (iv)(v))

Para 7-A(ix)

(ix)	Gross Total Value	Rs.52,23,704/-	Rs.2,35,648/-	N.A.	N.A.	N.A.	N.A.
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Para 7-B(ii) and (v)

(ii)	Non-Agricultural land Location(s) Survey number(s)	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	Area (total measurement in sq. ft.)	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	Whether inherited	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	property (Yes/No)						
	Date of purchase in case of self-acquired property	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	Cost of land (in case of purchase) at the time of purchase	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	Any investment on the land by way of development, construction etc.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.

	Approximate current market value	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
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(v)	Others (such as interest in property)	Rs.2,50,000/-	N.A.	N.A.	N.A.	N.A.	N.A.
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(vi)	Total of current	Rs.1,12,50,000/-	N.A.	N.A.	N.A.	N.A.	N.A.
	market value of (i) to (v) above						

(9B)(f). Details of contracts, entered into by private companies in which candidate or spouse or dependents have share: 500,000 shares, Intouch Naturals Private Limited.

(11) ABSTRACT OF THE DETAILS GIVEN IN (1) TO (1)) OF PART A:

8. Details of Assets and Liabilities (Including offshore assets) in Rupees

A	Description Self Spouse	Self	Spouse	HUF	Dependent-1	Dependent-2	Dependent-3
	Movable Assets (Total Value)	Rs.3,24,704/-	Rs.2,20,648/-	N.A.	N.A.	N.A.	N.A.

B		Immovable Assets					
	III b.	Inherited assets (Total value)	Rs.82,50,000/-	N.A.	N.A.	N.A.	N.A.

36. Since the petitioner pleaded that affidavit in Form

26 dated 21.03.2019 suffers from defects of substantial

character, like non-filling of relevant columns; non-adherence to the instruction of the Election Commission of India regarding opening of separate bank, election expenditure and corrupt practices, it would be necessary to look into the affidavit in Form 26 dated 21.03.2019.

37. On a perusal of affidavit in Form 26 dated 21.03.2019 [Ext.Z/4], this Court finds that the first respondent kept Column 5 of Para 4 of the affidavit blank. Further in Para 7-A(ix), the first respondent has not correctly disclosed the gross total value for himself and his spouse. Similarly, in Para 7-B(ii) and (v), the first respondent failed to disclose information qua non-agricultural lands and other interest in immovable properties. Further, the first respondent failed to disclose the relevant details for showing a sum of Rs.1,12,50,000/- at Para 7-B (vi). He has also furnished false information in Para (9B)(f). The first respondent falsely shown Rs.3,24,704/- and Rs.2,20,648/- respectively at Part-B, Para (11)8(A) for himself and his spouse. False particulars are shown at Para (11)8B(iii)(b) of Part B, as the first respondent disclosed only a sum

of Rs.80,00,000/- being the value of the inherited immovable property at Part A, Para 7B(iv).

38. During his cross-examination, the first respondent [D.W.5] stated as under:

Q.12(a)	:	Do you agree that you have not mentioned the name of your spouse at para no.4 at no.2 of your Form-26 affidavit dated 21.03.2019?
Ans.	:	Yes
Q.12(b)	:	Do you agree that you have not mentioned regarding the non-agricultural land at the relevant column of para no.(7)(B)(ii) of your Form-26 affidavit dated 21.03.2019?
Ans.	:	Yes
Q.12(c)	:	Do you agree that you have not mentioned detail of profession or occupation of your spouse at para no.(9)(b) of your Form-26 affidavit dated 21.03.2019?
Ans.	:	Yes

39. On reading of the cross-examination of D.W.5, it is seen that an objection has been raised on behalf of the first respondent for asking the aforesaid questions by stating that after coming to know the mistakes in Form-26 dated 21.03.2019, the first respondent submitted a revised Form-26 on 25.03.2019. In view of the finding arrived at by this Court in the preceding paragraph that the only Form-26 officially uploaded in the website of the Election Commission of India is the affidavit in Form-26 dated 21.03.2019, the said objection raised by the first respondent during cross-examination is unsustainable. As such, the learned counsel for the petitioner has rightly put the aforesaid suggestion in the form of Q.Nos.12(a) to 12(c) and the first respondent has also rightly given answer "Yes" for all three questions.

40. During the cross-examination, when the first respondent was put a question that "Do you agree that all documents at Ext.Z/7 (Part-A Register), Ext.Z/8 (Part-B Register) and Ext.Z/9 (Part-C Register) are documents pertaining to your election expenditures of 17th Lok Sabha Election, 2019 of 2-Outer Manipur Parliamentary Constituency", the answer given by the first respondent was 'Yes'. In fact, the first respondent admitted that he left blank the details of his spouse, her source of income, details of returns for the last five years, details of his dependent, details of his non-agricultural land, details of movable assets and have falsely stated his and his spouse's jewellerys, cash in hand as well as the value of the property in Form 26 dated 21.03.2019.

41. At this juncture, Mr. HS Paonam, the learned senior counsel for the first respondent submitted that the first respondent is living in the Hill District of Manipur, where the Manipur Land Revenue and Land Reforms Act, 1960 is extended.

42. In reply, the learned counsel for the petitioner submitted that the land within the Hill area except some area is the unsurveyed land and accordingly, there is no recorded document but the people who are living at Hill area have obtained their land through Headman or Village Chief by paying Hill House Tax and that the Hill people can sell their land amongst themselves and they can construct, develop their land as similar with land in the Valley area of Manipur.

43. According to the petitioner, the first respondent has a non-agricultural land where he has constructed his house. In his evidence, the first respondent admitted the said fact. Therefore, the first respondent is duty bound to disclose his non-agricultural land where building/house was constructed in Form-26 dated 21.03.2019. On a further reading of the deposition of the first respondent, when the learned counsel for the petitioner posed a question "Do you agree that you have not mentioned regarding the Non-agricultural land at the relevant column of para No.(7)(B)(ii) of your Form 26 affidavit

dated 21.03.2019?, the first respondent replied “Yes”. According to the petitioner, noting the aforesaid non-disclosure of the material facts, the Returning Officer ought to have rejected the nomination paper of the first respondent.

44. The learned counsel for the petitioner submitted that Section 77 of the RP Act contains 3 sub-section i.e. (i) opening of separate election bank account; (ii) maintenance of election expenditures account as prescribed bylaw/guidelines/instructions and election expenditures should not exceed the maximum limit for expenditures as prescribed. Highlighting the above three conditions, the learned counsel for the petitioner argued that the first respondent has violated the aforesaid.

45. Rebutting the argument of the learned counsel for the petitioner, the learned senior counsel for the first respondent submitted that it has been proved that the election expenditure has been accepted by the competent authority being found to be in compliance and in consonance with the relevant laws and rules and also submitted within the time. He would submit that the petitioner is oblivious of the very fact that through the evidences of the first respondent and the official witnesses, it has been proved that there were no illegality committed and no failure on the part of the first respondent to properly maintain his election expenditures.

46. The learned senior counsel added that the petitioner has failed to appreciate the fact that his Election Petition lacks material particulars and material facts and could not prove the allegations made by him against the first respondent of illegal act and fraudulent act in respect to election expenditure and corrupt practices being baseless and rightly so, as there were no violation of any instructions/guidelines of the Election Commission of India.

47. The learned senior counsel further submitted that the Election Petition must contain material facts and if there are allegations of corrupt practice, it must contain full particulars. Further, the behavior, character and demeanor of the witness to be taken into account is a matter of prime consideration. He also submitted that there are lot of discrepancies between the pleadings of the Election Petition and the statements of witnesses examined on the side of the petitioner qua the alleged corrupt practice levelled against the first respondent. To fortify the aforesaid submission, the learned senior counsel placed reliance upon a decision of the Hon’ble Supreme Court in the case of *Govind Singh v. Harchand Kaur*, (2011) 2 SCC 621.

48. By placing reliance on the decision of the Hon’ble Supreme Court in the case of *Virender Nath Gautam v. Satpal Singh and others*, (2007) 3 SCC 617, the learned senior counsel submitted that in the absence of pleading, a party cannot be allowed to lead evidence. Here, in the case on hand, most of the evidence let in by the petitioner is without pleading.

49. The learned senior counsel urged that the petitioner failed to appreciate the actual fact that the first respondent has provided true and correct statement of election expenditure which has been duly accepted by the authority concerned.

50. Highlighting the evidence of P.W.3, Bank Manager of the IDBI Bank, Imphal Branch, the learned senior counsel for the first respondent submitted that in his evidence, P.W.4 clearly answered that the bank account of the first respondent was opened on 24.3.2019 and has submitted and exhibited the said account statement as Ext.Z/12.

51. Countering the aforesaid arguments of learned senior counsel for the first respondent, the learned counsel for the

petitioner highlighted the following aspects regarding opening of separate election bank account:

1. The first respondent opened his election separate bank account bearing Account No.121910299995449 of IBBI, Imphal on 24.03.2019. First amount for opening the said account was deposited a sum of Rs.20 lakh from the first respondent on 26.03.2019.
2. The first respondent never routed the expenditure of Rs.19,250/- incurred on 21.03.2019 through his election separate bank account.
3. The first respondent never opened his election separate bank account prior to filing of nomination.

52. Before dealing with the submissions advanced by the learned counsel for the petitioner and the learned senior counsel for the first respondent, firstly, it would be apposite to reproduce and examine the relevant legal framework contained in the RP Act hereunder:

“Section 33 of the Act deals with Presentation of Nomination Paper and requirements for a valid nomination, which is reproduced as under:

"33. Presentation of nomination paper and requirements for a valid nomination.--(1) On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer: [Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the Returning Officer on a day which is a public holiday.

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers.

(1-A) Notwithstanding anything contained in sub-section (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly

constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed:

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;

(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;

(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in 3[Section 9] has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the

nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,--

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such

Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.--For the purposes of this subsection, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under Sections 147, 149, 150 or, as the case may be, 151 on the same date.

Section 36 of the Act deals with scrutiny of nominations and is extracted below :-

"36. Scrutiny of nominations.--(1) On the date fixed for the scrutiny of nominations under

Section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in Section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:--

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:-- Articles 84, 102, 173 and 191, [Part II of this Act and Sections 4 and 14 of the Government of Union Territories Act, 1963]; or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (b) or clause

(c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of Section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control: Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his noticeboard.

53. A careful perusal of the aforesaid provisions of the RP Act goes to show that Section 33 deals with presentation of valid nomination papers and Section 36 deals as to whether a nomination is valid one or whether the candidate incurred any disqualification for filing a nomination or failed to comply with any of the statutory provisions and whether the signature of the candidate or the proposer on the nomination papers is genuine or not or every column is filled by the candidate according to the norms and guidelines issued by the Election Commission of India etc. If a candidate incurs any disqualification, his nomination is liable to be rejected under Section 36(2)(a) of the RP Act and if the candidate fails to fulfill or comply

with the provisions of Section 33 of the RP Act in presenting a valid nomination such as subscribing ten proposers or any other guidelines/rules, if he is not a candidate set up by a recognized political party or if he is contesting on a reserved seat and if the caste certificate is not filed, such nomination cannot be treated as a valid nomination and therefore, it is liable to be rejected for failure to comply with the statutory provisions of Section 33 of the RP Act or if there is no requisite deposit made under Section 34 of the RP Act, then also such nominations are liable to be dismissed for failure to comply with the provisions of Section 34 of the RP Act.

54. In the backdrop of the aforesaid legal position, it is imminently clear that whenever there is an improper acceptance or rejection of the nomination papers on the above grounds, it shall be deemed that the election of a returned candidate is materially affected for non-compliance of the provisions of the Constitution or the provisions of the RP Act or the Rules made thereunder. Cases where the candidates are not entitled to contest by reason of illegal acceptance of their nomination papers are liable to be equated to such of the cases where the nominations of candidates were improperly rejected for the purpose of declaring the election as void.

55. At this juncture, it apposite to point out that in a catena of decisions, the Hon'ble Supreme Court made it mandatory to disclose array of information about the contestant and his family members. Few of the decisions of the Hon'ble Supreme Court on this point are given hereunder for ready reference.

56. The decision in the case of *Union of India v. Association for Democratic Reforms and another (2002) 5 SCC 294* is a watershed on electoral reforms ushering in new norms, wherein series of directions were issued on disclosure of information by contesting candidate.

~46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1.....

2.....

3.....

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

"(1) Everyone shall have the right to

hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles

141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.

7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man - citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers."

57. In *Association for Democratic Reforms* (supra) the Hon'ble Supreme Court, issued the following directions;

~47. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as stated below.

48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.

49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months."

58. After the decision of the Hon'ble Supreme Court in *Association for Democratic Reforms* (supra), an Ordinance which was promulgated by the President of India on 24.08.2002 by which Sections 33A and 33B were inserted in the RP Act. Subsequently, the said Ordinance was repealed and the Representation of People (3rd Amendment) Act of 2002 was noticed inserting Sections 33A and 33B in the RP Act. Section 33A requires the candidate to furnish additional information as to-

"(i) whether he is accused of any offence punishable with imprisonment for 2 (two) years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction.

(ii) whether he has been convicted of an offence other than any offence referred to in sub-section (1) or subsection (2), or covered in subsection (3), of section 8 and sentenced to imprisonment for one year or more."

59. Section 33B of the RP Act provided that notwithstanding anything contained in any judgment, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under the Act or the rules made thereunder. The aforesaid Section 33A did not provide for furnishing

of the information as directed by the Hon'ble Supreme Court in *Association for Democratic Reforms* (supra) and sought to cut away the scope of the directions by incorporating Section 33B.

60. Section 33B inserted by the 3rd Amendment Act of 2002 was challenged before the Hon'ble Supreme Court in *People's Union for Civil Liberties (PUCL) and Another v. Union of India and Another*, (2003) 4 SCC 399. The Hon'ble Supreme Court, while dealing with the issue, touched upon various aspects of the directions issued in the earlier case of *Association for Democratic Reforms* (supra) and reaffirmed the said decision which required furnishing of information by the candidates as regards the antecedents relating to criminal cases/offences, assets, liabilities and debts of the candidates and their spouses and children and lastly the educational qualification of the candidates. The aforesaid direction by the Hon'ble Supreme Court for furnishing information was based on the broader interpretation of Article 19 (1) (a) of the Constitution of India, which guarantees freedom of speech and expression to the citizen of this country. The aforesaid information were held to be an important ingredients of Article 19 (1) (a) and accordingly, the Hon'ble Supreme Court made the following observations:

"18. So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man - a citizen - a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is a necessity."

61. In the said decision, His Lordship *Hon'ble M.B.Shah,J.*, summarized the issues as under:

“78. What emerges from the above discussion can be summarised thus:

(A).....

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

(C) The judgment rendered by this Court in *Assn. for Democratic Reforms* has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) ”

62. In the aforesaid decision, *His Lordship Hon'ble P.Venkatarama Reddi,J.*, though endorsed the view as regards unconstitutionality of Section 33B, expressed disagreement in certain areas and observed as under:

“123. Finally, the summary of my conclusions:

(1) Securing information on the basic details

concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

(3) The directives given by this Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

(4) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in

which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

(8) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

63. From the above decision, what transpires is that there is need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children and the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of the guarantee under Article 19 (1) (a) of the Constitution of India. Further, the inference which can be drawn is that failure to furnish information as regards the non-disclosure of correct assets and liabilities by a candidate would be a serious lapse on the part of the candidate, as it would violate the right of the voters.

64. Pursuant to the decision of the Hon'ble Supreme Court in *Association for Democratic Reforms* (supra), Rule 4A was inserted. Rule 4A is quoted hereunder for ready reference:

"4A. Form of affidavit to be filed at the time of delivering nomination paper.- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

65. In terms of the aforesaid Rule 4A, a candidate has to submit an affidavit with detailed particulars as provided in Form 26.

Paras 7 and 8 of Form 26 require giving information about the details of movable and immovable assets of the candidate, spouse and children. It is in the Form 26 submitted by the first respondent that he had failed to disclose his wife's account details, failed to disclose the details of his vehicle and also failed to disclose his non-agricultural land, which are at the serious dispute between the parties in this election petition.

66. This was followed by the decision in *People's Union for Civil Liberties (PUCL) and another vs. Union of India and others (2003) 4 SCC 399*. The amended Section 33-B was declared null and void and ultra vires the Constitution as it went beyond legislative competence, as the Hon'ble Supreme Court has already held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of the candidate. The Hon'ble Supreme Court further emphasized the relevance of disclosure of information and held thus:

“70. Hence, in our view, right of a voter to know the bio-data of a candidate is the foundation of democracy. The old dictum — let the people have the truth and the freedom to discuss it and all will go well with the Government — should prevail.

78. What emerges from the above discussion can be summarised thus:

A).....

.....

.....

(D) However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such

rights on the basis of the judgments rendered by this Court.”

67. The decisions of the Hon’ble Supreme Court in the cases of *Association for Democratic Reforms* and *People’s Union for Civil Liberties (PUCL)*, supra, are widely recognized as the strong base of electoral reforms in India. Statutory interpretation therein onwards has been strict, implementing the maxim that the right of the voter to know the bio-data of the candidate is the foundation of democracy.

68. This Court would like to refer to the subsequent decision of the Hon’ble Supreme Court in the case of *Resurgence India v. Election Commission of India*, (2014) 14 SCC 189, wherein the Hon’ble Supreme Court re-examined the issue of the decisions rendered in *Association for Democratic Reforms* (supra) and *PUCL* (supra).

69. In *Resurgence India* (supra), the Hon’ble Supreme Court re-visited the relevant laws and issued the following directions:

“29. What emerges from the above discussion can be summarised in the form of the following directions:

29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. It is the duty of the Returning Officer to check whether the information required is fully

furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

29.5. We clarify to the extent that para 73 of *People's Union for Civil Liberties* case I will not come in the way of the Returning Officer to reject the nomination paper when the

affidavits filed with blank particulars.

29.6. The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her."

70. From the above directions of the Hon'ble Supreme Court, the right to know full particulars of a candidate, which includes information about the assets and liabilities of the candidate, his spouse and dependents, has been recognized as a vital part of Article 19 (1) (a) of the Constitution of India. In **Resurgence India** (supra), the Hon'ble Supreme Court also held that filing of an affidavit with blanks qua particulars sought would make it liable to be rejected by the Returning Officer.

71. In **Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162**, the Hon'ble Supreme Court held as follows:

"40. We have already reproduced above the relevant portions of judgments in Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] and People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children, is not given, it would amount to suppression/non-disclosure."

72. In **Krishnamoorthy Vs. Sivakumar, (2015) 3 SCC 467**, the Hon'ble Supreme Court held that voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. Therefore, disclosure of criminal antecedents is a categorical imperative and non-disclosure would amount to undue influence.

Concealment would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote. The requirement of disclosure, especially of the criminal antecedents, enables a voter to have an informed and instructed choice.

73. *In Public Interest Foundation and others v.*

Union of India and another, (2019) 3 SCC 224, the issue that fell for consideration of the Hon'ble Supreme Court was whether disqualification for membership can be laid down by the Court beyond Articles 102 (a) to (d) and the law made by the Parliament under Article 102(c). The Hon'ble Supreme Court observed,

“115. The information given by a candidate must express everything that is warranted by the Election Commission as per law. Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified. It has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice. If his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are accused of heinous offences.”

74. By the aforesaid decisions, the Hon'ble Supreme Court emphasized that the right to vote is sacrosanct and inviolable and an elector can effectively exercise this right only when he is presented with mirror images of the candidates contesting the elections to the Indian Parliament and/or the State Legislature containing array of information on all aspects of the candidates. An informed decision would make the election process more inclusive and effective, leading to realizing vibrant democratic institutions. Hon'ble Supreme Court firmly put in place the system of full disclosure on all aspects of a contestant ushering in a new era.

75. In the light of the law laid down by the Hon'ble Supreme Court, now it is expedient to consider the statutory framework on the disclosure of information by the candidates and the effect of non-disclosure. The following provisions are relevant in the case on hand and, therefore, they are quoted hereunder:

“2(1)(c) “corrupt practice”
means any of the practices
specified in Section 123.

33-A. Right to information.—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his Nomination Paper delivered under subsection (1) of Section 33, also furnish the information as to whether—

- (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;
- (ii) he has been convicted of an offence other than any offence

referred to in sub-section (1) or sub-section (2), or covered in subsection (3) of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the Nomination Paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the Nomination Paper is delivered.

S.100. Grounds for declaring election to be void.— (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion—

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

S.123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 279[with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind

including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

S.125-A. Penalty for filing false affidavit, etc. – A candidate who himself or through his prosper, with intent to be elected in an election,--

(i) fails to furnish information relating to sub-section (1) of Section 33-A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

In his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”

76. Section 2(1)(c) defines ‘corrupt practice’ meaning as specified in Section 123 of the RP Act.

77. Section 33-A of the RP Act recognizes inalienable right of a citizen to know everything of candidates contesting the elections offering to represent the citizens in the Central or State legislature. It therefore obligates the candidates to disclose all information about themselves and their family members, including the criminal record of the candidates.

78. Section 123 of the RP Act incorporates what constitutes corrupt practices. What is shown therein is illustrative and the Act intends to give wide scope to the term ‘corrupt practice’. Non-disclosure of information on pending crimes by a contestant amounts to ‘Undue influence’ scuttling the right of an elector in assessing the suitability of the candidate and is a ‘corrupt practice’. It is a ground to disqualify an elected candidate under Section 100 of the Act, 1951.

79. As per Section 100 of the RP Act, whenever it is established that the elected candidate resorted to ‘corrupt practice’ to win the election, his election can be declared as void.

80. Along with the nomination paper, a candidate is

required to file an affidavit in Form 26. The affidavit should be sworn before a Magistrate of the First Class or before a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned. The duly sworn affidavits should be on stamp paper of such denomination as prescribed under the State law of the State concerned. While supplying forms of nomination papers, the Returning Officer will attach to nomination form a copy of Form 26 appended to the Conduct of Election Rules, 1961. No column of the affidavit should be left blank or filled by just tick/dash marking. If the information asked for in a column is 'Nil' or not applicable or not known to the candidate then he should write 'Nil' or 'Not applicable' in that column.

81. The Hon'ble Supreme Court, time and again, held that in the affidavits filed by candidate along with their nomination paper, the candidates are required to fill up all columns therein and no column can be left blank. Therefore, at the time of filing of affidavit, it is the bounden duty of the Returning Officer to verify whether all the columns of the affidavit filed with the nomination paper are filled up. If not, the Returning Officer shall give a reminder in prescribed checklist to the candidate to furnish information against blank columns. The candidate must submit a revised affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected.

82. The Hon'ble Supreme Court further held that if there is no information to be furnished against any item, appropriate remarks such as 'NIL' or 'Not Applicable' or 'Not Known' as may be applicable shall be indicated in such column. They should not leave any column blank. If a candidate fails to fill the blanks even after reminder, the nomination paper will be liable to be rejected by the Returning Officer at the time of scrutiny of nomination papers. Copies of the affidavits will be displayed in the premises of a public place within the constituency freely accessible to the general public. Displaying copies on the Returning Officer's notice board will be done in all cases, even if the office is outside the boundary of the constituency. Uploading of affidavits filed by candidates in the website. Such uploading should also be done within 24 hours of filing of the same. The affidavits filed by candidates were to be disseminated by displaying copies thereof on the notice board of the Returning Officer and by making copies available freely to those seeking the same.

83. The Hon'ble Supreme Court further held that the information furnished by the contesting candidates in relation to the Government dues to the five departments mentioned in item (8)(ii) & (iii) of the affidavit will be published by the Returning Officers concerned in at least two newspapers having local circulation, one of which should be a vernacular newspaper. This should be published by the Returning Officer within two days after preparing the list of contesting candidates. If there is more than one constituency in a District, the District Election Officer will publish the above information in a consolidated form in respect of all constituencies (constituency wise) in that District. When the information on Government dues is published in the newspaper, there will be a note added therein mentioning the places where the other details viz., criminal background, assets, liabilities and education qualification of all the contesting candidates, can be found. The note will also mention that the affidavit can be viewed on the website of the Chief Election Officer and path to the website will also be mentioned.

84. In the light of the aforesaid principles, this Court proceeds to deal with the matter. According to the learned counsel for the petitioner, the nomination papers filed by the first respondent dated

21.3.2019 was improperly accepted by the first respondent in violation of the provisions of laws and instructions of the Election Commission of India. He would submit that the various pronouncement of the judgments of the Hon'ble Supreme Court it has been held that it is mandatory to accompany Form 26 and none of the columns left blank in Form

26 which is in the form of affidavit. If a nomination paper accompanied with incomplete and/or incorrect information is accepted by the Returning Officer, then it is considered as improper acceptance which would materially affect the election of the other candidate.

85. The learned counsel for the petitioner urged that non-disclosure of material information required and withholding of material information or concealment of material information in the affidavit filed along with the nomination paper in the election of the Parliament by the first respondent, the election of the first respondent has to be set aside. He added that if the corrupt practice is proven, the Court is bound to declare the election of the returned candidate to be void.

86. To fortify his submission, learned counsel for the petitioner relied upon the following decisions:

- (i) *Kisan Shankar Kathore v. Arun Dattatray Sawant and others, (2014) 14 SCC 162.*
- (ii) *Krishnamoorthy v. Sivakumar and others, (2015) 3 SCC 467.*
- (iii) *M. Narayan Rao v. G. Venkata Reddy and others, (1977) 1 SCC 771.*
- (iv) *Mayanglambam Rameshwar Singh v. Yengkhom Surchandra Singh and others, 2020 SCC OnLine Mani 312.*

87. In *Kisan Shankar Kathore*, (supra), the Hon'ble Supreme Court held thus:

“43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when

the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.”

88. In *Krishnamoorthy* supra, the Hon'ble Supreme Court held as under: “60. The purpose of referring to the same is to remind one that the right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. And the ground of “undue influence” is a part of corrupt practice.

61. Section 100 of the 1951 Act provides for grounds for declaring election to be void. Section 100(1) which is relevant for the present purpose reads as under:

“100. *Grounds for declaring election to be void.*—(1) Subject to the provisions of subsection (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.”

89. *Mayanglambam Rameshwar Singh*, supra, this Court held as hereunder:

“88. In fact, in his election petition as well as oral evidence, the petitioner has clearly stated that the result of the election in so far as it concerns the first respondent has been materially affected on the grounds indicated in paragraph (20) of the election petition. The non-disclosure of the assets of his wife in the affidavit in Form 26 has been admitted by the first respondent. The aforesaid one example is enough to conclude that the first respondent has failed to disclose his wife's assets in his nomination paper. In view of the above admission made by the first respondent, this Court is of the view that there is no need to elaborate upon the decisions relied on by the first respondent and the same are not helpful to the case of the first respondent. Though the first respondent contended that the oral evidence of P.W.1 and P.W.2 are not reliable, nothing has been produced to prove the same and also there is no reasoning coming forth from the side of the first respondent to strengthen their version.”

90. The learned senior counsel for the first respondent submitted that since there was defect in the nomination paper dated 21.03.2019, a revised nomination paper and the revised affidavit in Form 26 have been filed on 25.03.2019, which was accepted by the Returning Officer after scrutiny. The aforesaid contention of the first respondent has not been materially proved. This Court already came to the conclusion that only affidavit in Form 26 dated 21.3.2019 was uploaded officially and there is no record to show that affidavit in Form 26 dated 25.3.2019 of the first respondent was accepted by the Returning Officer and was uploaded in the website.

91. When this Court examined Para 4 of the affidavit Form 26 dated 21.03.2019, the first respondent kept Column 5 blank. The first respondent in his evidence also confirmed that he has not filled and left blank the details of his spouse, her source of income, details of returns for the last five years.

92. It is pertinent to point out that the provision of RP Act provides for filing of maximum four nomination papers, but as per Section 33A of the RP Act read with Rule 4A, the candidate is required to file a duly sworn affidavit under Form 26 along with the nomination papers containing true and correct facts along with complete information, which cannot be different. The four nomination papers must be accompanied with the same affidavit under Form 26. In the case on hand, as stated supra, the first

respondent left column 5 of para 4 of the affidavit in Form 26 dated 21.3.2019 blank, which was also admitted by the first respondent in his evidence. Acceptance of such unfilled and/or blank affidavit by the Returning Officer is against the provisions of law and also amounts to improper acceptance.

93. Coming to election expenditure, in order to facilitate monitoring of election expenditure, the Election Commission of India issued notification dated 15.10.2013 whereby the Election of India has made it mandatory for each candidate to open a separate bank account exclusively for the purpose of election expenditure. The election account should be opened any time at least one day before the date on which the candidate intends to file his nomination papers and the account number must be communicated by the candidate in writing to the Returning Officer at the time of filing of his nomination.

94. The petitioner pleaded that the first respondent has failed to maintain true and correct account of all expenditures in connection with the election and the same is in violation of Section 77 of the RP Act, thereby he has committed corrupt practice as defined under Section 123(6) of the RP Act. Therefore, the election of the first respondent is liable to be declared void under Section 100(1)(b) read with Section 100(1)(d)(iv) of the RP Act.

95. Sections 77 and 123 of the RP Act provide thus:

“77. Account of election expenses and maximum thereof.—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this

sub-section.

Explanation 2.—For the purposes of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

(i) where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act: Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

“123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1)

(2)

(3)

(4)

(5)

(6) The incurring or authorizing of expenditure in contravention of section 77.

96. The learned counsel for the petitioner submitted that when the total amount withdrawn for running expenses and other expenses for the election is calculated from Ext.Z/9, the total amount comes around Rs.74,13,100/-, which is beyond the limit of Rs.70 lakh set for the Lok Sabha election and, therefore, is in violation of Section 77(3) of the RP Act, coupled with the fact that there is a corrupt practice under Section 123(6) of the RP Act and on the said ground also, the election of the first respondent is liable to be declared as null and void. He submitted that this Court cannot ignore the said illegality and the fraudulent act of the first respondent in not providing true and correct statement of expenditures/accounts.

97. At this juncture, by placing reliance upon the decision of the Hon'ble Supreme Court in the case of *L.R.Shivaramagowda v. T.M.Chandrashekar, (1999) 1 SCC 666*, the learned senior counsel for the first respondent submitted that the excess expenditure and failure to maintain true and correct accounts alone does not amount to corrupt practice. The learned counsel for the first respondent has also drawn the attention to the deposition of P.W.4 and D.W.7 and submitted that there were no irregularities in the maintenance of the statement of election expenditure and the same has been duly accepted after satisfaction by the Returning Officer and also within the applicable Act and the Rules. It is also the submission of the learned senior counsel that the Expenditure Observer has not properly discharged his duties that does not mean that the illegality committed by the first respondent can be allowed to be sustained is unacceptable, as it has neither been raised during the trial nor pleaded in the election petition.

98. The learned senior counsel further submitted that the irregularity in the maintenance of the election expenditures does not have any fatal effect when the election expenditures were verified and accepted by the Expenditures Observer. He submits that if the election expenditure is accepted in violation of law, the petitioner ought to have approached the Election Commission of India under Section 10A of the RP Act. Admittedly, the petitioner has failed to do so. Therefore, he cannot now take such plea.

99. In *L.R.Shivaramagowda*, supra, the Hon'ble Supreme Court held as under:

“10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under Section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted para 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment, it was not open to the appellant to adduce evidence to that effect. It cannot be

denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.

11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between “material facts” and “material particulars”. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. In *Balwan Singh v. Lakshmi Narain* [AIR 1960SC 770 : (1960) 3 SCR 91] the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given.

12. In *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238] the Court said that if the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later, but where the material facts themselves are missing, it is impossible to think that the charge has been made and later amplified and that would tantamount to making of a fresh petition.

12A. In *Virendra Kumar Saklecha v. Jagjiwan* [(1972) 1 SCC 826] this Court stressed the importance of disclosure of sources of information in the affidavit filed along with the election petition. The relevant passage reads thus: (SCC pp. 830 & 831, paras 10, 13-15)

“10. The respondent filed an affidavit along with the election petition. The affidavit did not disclose the source of information in respect of the speeches alleged to have been made by the appellant. Section 83 of the Act requires an affidavit in the prescribed form in support of allegations of corrupt practice. Rule 94-A of the Conduct of Elections Rules, 1961, requires an affidavit to be in Form No. 25. Form No. 25 requires the deponent to state which statements are true to knowledge and

which statements are true to information. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Under Section 102 of the Code the High Court may make rules regulating their own procedure and the procedure of the civil courts subject to their supervision and may by such rules vary, alter or add to any of the rules in the First Schedule to the Code.

13. The importance of setting out the sources of information in affidavits came up for consideration before this Court from time to time. One of the earliest decisions is *State of Bombay v. Purushottam Jog Naik* [AIR 1952 SC 317] where this Court endorsed the decision of the Calcutta High Court in *Padmabati Dasi v. Rasik Lal Dhar* [ILR (1909) 37 Cal 259] and held that the sources of information should be clearly disclosed. Again, in *Barium Chemicals Ltd. v. Company Law Board* [AIR 1967 SC 295] this Court deprecated 'slipshod verifications' in an affidavit and reiterated the ruling of this Court in *Bombay case* [AIR 1952 SC 317] that verification should invariably be modelled on the lines of Order 19 Rule 3 of the Code 'whether the Code applies in terms or not'. Again, in *A.K.K. Nambiar v. Union of India* [(1969) 3 SCC 864] this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

14. Counsel on behalf of the appellant contended that non-disclosure of the sources of information in the affidavit was a fatal defect and the petition should not have been entertained. It is not necessary to express any opinion on that contention in view of the fact that the matter was heard for several months in the High Court and thereafter the appeal was heard by this Court. The grounds or sources of information are to be set out in an affidavit in an election petition. Counsel on behalf of the respondent submitted that the decisions of this Court were not on election petitions. The rulings of this Court are consistent. The grounds or sources of information are to be set out in the affidavit whether the Code applies or not. Section 83 of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information are required to be stated.

15. The non-disclosure of grounds or sources of information in an election petition which is to be filed within forty-five days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds, if there is any embellishment of the case it will be discovered.”

13. In *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511] a Division Bench of this Court explained the distinction between material facts and material particulars as follows: (SCC p. 523, paras 42-43)

“42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are ‘material facts’. In the context of a charge of corrupt practice ‘material facts’ would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action are ‘material facts’ which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

43. ‘Particulars’ on the other hand are ‘the details of the case set up by the party’. ‘Material particulars’ within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). ‘Particulars’ serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.”

The Bench held that if a petition suffers from

lack of material facts, it is liable to be summarily rejected for want of cause of action and if the deficiency is only of material particulars, the Court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.”

14. In *F.A. Sapa v. Singora* [(1991) 3 SCC 375] the Court considered the relevant sections and the Rules at length and reiterated the difference between material facts and material particulars. The Court said: (SCC pp. 395-96, para 18)

“Section 83(1)(a) stipulates that every election petition shall contain a concise statement of the ‘material facts’ on which the petitioner relies. That means the entire bundle of facts which would constitute a complete cause of action must be concisely stated in an election petition. Section 83(1)(b) next requires an election petitioner to set forth full ‘particulars’ of any corrupt practice alleged against a returned candidate. These ‘particulars’ are obviously different from the ‘material facts’ on which the petition is founded and are intended to afford to the returned candidate an adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the election petitioner to set out in a concise manner all the ‘material facts’ as well as the ‘full particulars’, where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition.”

With regard to the affidavit to be filed along with the election petition in the prescribed Form No. 25, the Court observed that the defect in such affidavit could be cured unless it formed the integral part of the petition in which case, the defect concerning material facts will have to be dealt with subject to limitation under Section 81 of the Act.

15. In *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* [(1995) 5 SCC 347] a Division Bench of which one of us (Anand, J. as he then was) was a member dealt with this aspect of the matter in extenso and held that allegations of corrupt practice must be properly alleged and both material facts and particulars should be provided in the petition itself so as to disclose the complete cause of action. The relevant passage in the judgment reads thus: (SCC pp. 361-62, paras 16-18)

“16. The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent

of the returned candidate or by his election agent. Suspicion, however strong, cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

17. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.

18. A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to *disclose his source of information* in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise.”

As regards amendment of pleadings in an election petition, the Bench held that there is a complete prohibition against any amendment being allowed which may have the effect of introducing either material facts not already pleaded or of introducing particulars of a corrupt practice not previously alleged in the petition. The Court pointed out that in that case, the High Court ought not to have allowed evidence to be led by the election petitioner which was beyond the pleadings of the parties for no amount of evidence can cure a defect in the pleadings but it was all the more improper for the trial court to have allowed the pleadings to be amended so as to be brought in conformity with the evidence already led in the case.

16. If the above well-settled principles are applied in this case, there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have

been permitted to adduce any evidence with reference to the same.

16A. We have already extracted paras (f) and (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (a) to (e) of the affidavit state that the averments therein are true to his information. Para (f) is silent on this aspect of the matter. Para (g) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the Conduct of Elections Rules. It is a very serious defect which has been overlooked by the High Court.

17. Learned counsel for the first respondent made an attempt to show that the pleading contains the relevant material facts. According to him, para 39 of the election petition sets out the expenses incurred by the appellant per vehicle per day and the total number of vehicles used by him. It was also contended that the price of the newspaper *Nagamangala Mitra* per copy was mentioned and the total number of copies purchased for distribution to the voters was also mentioned. It was argued that those were the material facts and by themselves they proved that the appellant had incurred an expenditure exceeding the prescribed limit. We are unable to accept this contention. After setting out those figures, the averment found in the election petition is only to the effect that the said cost incurred by the appellant had not been furnished in his statement of account. The fact that in the last part of the said sentence, it was alleged that there was contravention of Section 123(6) of the Act, would not come to the aid of the first respondent to contend that the relevant material fact of excessive expenditure over and above the prescribed limit had been pleaded. We must also refer to the fact that for the purpose of Section 100(1)(d)(iv), it is necessary to aver specifically that the result of the election insofar as it concerns a returned candidate has been materially affected due to the said corrupt practice. Such averment is absent in the petition.

18. We shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained a true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. "Corrupt practices" have been set out in Section 123 of the Act. According to the first

respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Elections Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77, i.e., the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall under Section 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Sections 77(1) and (2) will in no case affect, and much less materially, the result of the election.”

100. In *Govind Singh* (supra), the Hon'ble Supreme Court held as under:

“73. Thus, while comparing the evidence of PW 9, PW 10, PW 11 and PW 12 relied upon

by the respondent Smt Kaur with the evidence of PW 1, PW 2, PW 4, PW 5 and PW 6, it is not possible to attach more weight to the witnesses relied upon by the respondent herein as we cannot overlook the well-settled position that the behaviour, character and demeanour of the witnesses who had been examined at the stage of trial has to be taken into account and is of prime consideration. In view of this position, the evidence of PW 1, PW2, PW 4, PW 5 and PW 6 is clearly more reliable than PW 9, PW 10 and PW 11.

78. In view of the unsatisfactory analysis of the evidence and erroneous approach of the High Court while recording the finding on the issue of corrupt practice, we consider this appeal fit to be allowed as no conclusive inference can be drawn that the respondent Smt Kaur who had secured only third position in the election has succeeded in proving the charge of corrupt practice against the returned candidate, the appellant herein and the same at best can be held to be based on allegations which desperately required unimpeachable evidence of trustworthy nature adduced by independent witnesses which could not be treated as tainted or evidence of doubtful nature. Since the charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities, the evidence relied upon by the High Court cannot be held to be of such probative value which does not reflect on the credibility of the witnesses relied upon by the High Court, so as to interfere with the election result by which the appellant had been elected. Consequently, we set aside the judgment and order of the High Court and allow this appeal. However, the parties are left to bear their own costs.”

101. As admitted by the first respondent, the election separate bank account was opened by the first respondent only on 24.03.2019. In his evidence, P.W.4 has clearly stated that as per the instructions of the Election Commission of India, a separate bank account exclusively for the purpose of election expenditure is required to be opened to facilitate monitoring of the election expenditure. The officially uploaded affidavit in Form 26 of the petitioner is dated 21.03.2019. Thus, it is clear that on the date of filing of the nomination papers i.e. on 21.03.2019, no bank account was opened by the first respondent. This clearly proves that the first respondent has violated the notification dated 15.10.2013 of the Election Commission of India. That apart, the first respondent did not maintain his election expenditures as per the instructions/guidelines of the Election Commission of India.

102. Any election expenses incurred without routing it through the said election separate bank account by way of cheque or draft or RTGS/NEFT will be treated that the candidate has not maintained the accounts in the manner prescribed by the Election Commission of India. As per the notifications dated 12.11.2018 and 30.11.2018, the limit of allowing the expenditure has been revised to Rs.10,000/- and that the expenditure limit of Rs.10,000/- by cash in

connection of an election consist of a single transaction or an aggregate of transactions entered into with a single person/entity during the entire poll period. Thus, all expenditures exceeding Rs.10,000/- whether by a single transaction or an aggregate of transactions with a single person/entity during the entire poll period have to be compulsorily made by cross account payee cheque or draft or by RTGS/NEFT or any other electronic mode linked with the separate election bank account of the candidate opened for election purpose.

103. Thus, from the aforesaid it is clear that all the election expenditures are to be made by the candidate only from the separate election bank account and all money to be spent on electioneering should also be deposited in the said account irrespective of its funding from any source, including candidate's own fund.

104. According to the petitioner, the following are the illegalities committed by the first respondent in his election expenditures:

“On 21.03.2022, the first respondent expended a sum of Rs.19,250/- without routing from his election bank account.

On 25.03.2019, the first respondent expended Rs.3,300/- for filing second nomination paper without routing from his election bank account.

On 26.03.2019, Election Bank Account bearing No.1219102000005449 of IDBI Bank, Imphal was opened and operational which is after filing of his nomination paper on 21.03.2019.

On 28.03.2019, the first respondent incurred expenses in cash a sum of Rs.21,600/- wherein he has mentioned the payee to be multiple parties.

On 30.03.2019, the first respondent incurred expenses in cash a sum of Rs.11,200/- in favour of ZBCT Men Society though in separate transactions of Rs.10,000/- and Rs.1,200/-.

On 01.04.2019, the first respondent incurred expenses in cash amounting of Rs.26,500/- in favour of the Chief of the Village for the meeting held at Laikoiching, Saikul in separate transactions.

On 06.04.2019, the first respondent incurred expenses in cash amount of Rs.13,400/- as vehicle expenses in three separate transactions of Rs.4000/-, Rs.4000/- and Rs.5400/-.”

105. To rebut the aforesaid particulars, the first respondent has not produced any materials. However, the learned senior counsel submitted that the 2-Outer Parliamentary Constituency is predominantly remote hill areas with no facility of Banking in most of areas except in some District headquarters during 17th Lok Sabha Election, 2019 and the same is backed by unshaken evidence of D.W.4, D.W.5 and D.W.6 as also the evidence of D.W.1 and D.W.3.

106. A candidate is not free to spend as much as he likes in the election. The law prescribes that the total election expenditure shall not exceed the maximum limit prescribed under Rule 90 of the Conduct of Election Rules, 1961. For the State of Manipur in the 17th Lok Sabha Election, 2019, a candidate can spend up to Rs.70 lakh.

107. On a perusal of Exts.Z/9 series, it is clear that the amount incurred for election expenses comes to Rs.74,13,218/-, which is beyond Rs.70 lakh as prescribed by the Election Commission of India. In fact, during cross-examination, when learned counsel for the petitioner posed a question – Do you agree that all documents at Ext.Z/7 (Part-A Register), Ext.Z/8 (Part-B Register) and Ext.Z/9 (Part-C Register) are documents pertaining to you Election Expenditures of 17th Lok Sabha Election 2019 of 2-Outer Manipur (ST) parliamentary Constituency, the first respondent answered “Yes”. Thus, from the details of election expenditure of the first respondent referred to above, it is clear that beyond the permitted limit, the first respondent incurred election expenses.

108. The Expenditure Observer is not properly discharged his duties does not mean that the illegality committed by the first respondent can be allowed to be sustained. As rightly argued by learned counsel for the petitioner, the petitioner is well within his rights to challenge the said illegality by way Election Petition and not approaching the Election Commission under Section 10 of the RP Act does not disentitle him to seek the remedy as available before this Court, especially when there is a gross illegality having been committed by the first respondent.

109. The argument of the learned senior counsel for the first respondent that most of the electors are living at remote area where no facility of Bank at most of the area of 2-Outer Parliamentary Election, 2019 and that the first respondent could not transact all his election expenditures through the Bank and that such irregularity cannot affect the election of the first respondent cannot be countenanced.

110. It is well settled principle that an illegality if committed cannot be allowed to be continued, especially when the same is brought to the knowledge of the Court.

111. In order to ascertain whether a corrupt practice has been committed or not, it is important that the scheme of the RP Act is to be read in consonance with each other provisions and not in parts or, in exclusion of one from the other, or in isolation.

112. Section 100 of the RP Act, lays down various grounds under which an election can be declared as null and void, one of them is “corrupt practice”. Corrupt practice is defined under Section 123 of the RP Act, which includes, bribery, undue influence, appear or to promote feeling of enmity, in the name of symbol, religion or caste, publishing false facts, hiring or procuring of vehicles, or free conveyance of any elector, incurring or authorizing of expenditure in contravention of Section 77, obtaining or procuring any assistance from authority or officer and booth capturing.

113. At this juncture, it is to be mentioned that it is bounden duty of a candidate to disclose the full particulars of the donors as per the mandatory instruction of the Election Commission of India and the first respondent cannot accept any donation in cash exceeding Rs.10,000/- without knowing the full particulars of the donors. There is also no provision or instruction of the Election Commission of India to collect money through donation box. As such, acceptance of cash exceeding Rs.10,000/- by the first respondent from the donors is against the mandatory instruction and is also illegal which amounts to corrupt practice and it also transpires the

corrupt practice committed by the first respondent, in view of the discussions held supra.

114. It is reiterated that Section 77 of the RP Act mandates maintaining and filing of separate and correct account of election expenses as per the prescribed format and also that the expenditure for the election should not exceed the prescribed limit. Further, if the returned candidate do not maintain or file election expenses as mandated under Section 77(1), (2) and (3) of the RP Act, then, it would mean that there is a non-compliance as laid down under Section 100(1)(d)(iv) of the RP Act and for that reason, the election of the returned candidate can be declared as null and void.

115. It is apposite to mention that the grounds under which an election could be declared void by the High Court are provided under Section 100 of the RP Act.

“Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 100 specify the grounds under which the election of the returned candidate can be declared void.

Section 100(2) clarified the conditions in which the election of the returned candidate may not be declared void. The present case does not fall under this category.

Clause (a) of Section 100(1) provides the situation where a returned candidate was not qualified on the date of his election or was disqualified to be chosen to fill the seat under the Constitution or this Act. It is not the case of the election petitioner that the respondent was not qualified or was disqualified, to be chosen to fill the seat under the Constitution or this Act. Hence, clause (a) of Section 100(1) is not attracted in the present case.

Clause (b) of Section 100(1) provides that an election can be declared void if the Court finds that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent.

Clause (c) of Section 100(1) provides for declaring the election void if any nomination is improperly rejected. Since in the present case there is no such case of improper rejection of any nomination, this ground is also not applicable.

116. The next ground for declaring the election to be void as provided under clause (d) of Section 100(1) of the Act is if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

“(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate or by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any

vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the election of the returned candidate shall be declared void."

117. It is the case of the petitioner that the nomination paper of the first respondent has been improperly accepted, which was otherwise liable to be rejected, as the first respondent has failed to disclose vital information. According to the learned counsel for the petitioner, furnishing of incorrect statement in the affidavit in Form 26 filed along with the nomination paper in terms of the provisions under Sections 33 and 33-A of the RP Act read with Article 173 of the Constitution of India deserves to be rejected under Section 36(2) of the RP Act. From the oral and documentary evidence produced by both sides, it is clear that the Returning Officer improperly accepted the nomination paper of the first respondent. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the right to know of the citizens. The candidate must take the maximum effort to explicitly remark as "Nil" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

118. It is also clear that the affidavit which was said to be accepted by the Returning Officer has not been uploaded in the official website of the Election Commission of India as mandated under law. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. Additionally, the non-dissemination of the affidavit in Form 26 dated 25.3.2019 through the website materially affected the election of the first respondent.

119. As discussed above, the first respondent has violated the instructions/notification/guidelines of the Election Commission of India and the mandatory provisions of the RP Act in committing illegality in the election expenditures and also exceeded the maximum limit for expenditures as prescribed. The aforesaid would also amount to corrupt practice as defined under the RP Act. Though the first respondent contended that he has not concealed any material information in his affidavit, as discussed above, nothing has been produced to establish the same. Further, the documents produced and are referred by the first respondent do not substantiate his case. On the other hand, the failure of the first respondent in disclosing the name of his spouse and his dependents, non-agricultural land and details of his spouse etc. in the affidavit in Form 26 of the first respondent dated 21.03.2019 would constitute a corrupt practice falling under undue influence as defined under Section 123(2) of the RP Act.

120. It is reiterated that whether the nomination paper is to be accepted or rejected at the time of scrutiny is purely within the domain of the Returning Officer and the Returning Officer has to decide within the confines of Section 36 of the RP Act and relevant laws holding the field. When defect or mistake is found to be of substantial character, then the Returning Officer is under legal obligation to reject the nomination and not otherwise. The petitioner contends that it is a defect of substantial character. On the contrary, the first respondent contends that there is no defect in his nomination, which was negated by this Court in the discussions held supra.

121. By placing reliance upon the decision of the Hon'ble Supreme Court in the case of *Magraj Patodia v. R.K. Birla*,

(1970) 2 CC 888, the learned senior counsel for the first respondent submitted that the alleged corrupt practice stated by the petitioner is to be proved beyond reasonable doubt and preponderance of probabilities is not sufficient.

122. In **Magraj Patodia** (supra), the Hon'ble Supreme Court held as under:

"29. It is true that many times corrupt practices at election may not be able to be established by direct evidence and the commission of those corrupt practices may have to be inferred from the proved facts and circumstances but the circumstances proved must reasonably establish that the alleged corrupt practice was committed by the returned candidate or his election agent. As mentioned earlier preponderance of probabilities is not sufficient."

123. In **Virender Nath Gautam** (supra), the Hon'ble Supreme Court held thus:

"35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

124. The initial burden to prove the allegations made in the Election Petition although was upon the petitioner, but for proving the facts which were within the special knowledge of the first respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also settled that when both parties have adduced evidence, the question of onus of proof becomes academic. Furthermore, an admission on the part of a party to the list shall be binding on him and in any event a presumption must be made that the same is taken to be established. The Exts.Z/4, to Z/9, which are admittedly filed by the first respondent before the Returning Officer and are admitted by him proves the allegation of the petitioner against the first respondent.

125. Time and again the Hon'ble Supreme Court held that the success of a winning candidate at an election should not be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his, but of someone else. That is why, the scheme of Section 100 of the RP Act, especially clause (d) of sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate was materially affected.

126. In order to get an election declared as void under the said provision, the petitioner must be aware that on account of non-compliance with the provisions of the Constitution or of RP Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected. As per the principle enunciated supra, in the instant case, in view of the

foregoing discussions, the petitioner has established that the result of the election, insofar as it concerned the returned candidate, namely the first respondent, was materially affected in order to set aside the same. As stated supra, if the petitioner establishes failure on the part of the first respondent to furnish the vital information as contemplated under Section 33A of the RP Act, the question whether the result of the returned candidate was materially affected or not is not a relevant factor to set aside the election of the first respondent. Hence, the submission made by the learned counsel for the first respondent has no legs to stand.

127. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of “undue influence” relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to interfere with the free exercise of the electoral right.

128. At the cost of repetition, the right of the voters to know of the relevant particulars of the candidates is very important, as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. A citizen of this country has a fundamental right to receive information regarding the assets and liabilities of a candidate of the Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful.

129. In the instant case, admittedly, the Returning Officer was in possession of two different nomination papers and affidavit in Form 26, thereby giving an advantage to the Returning Officer to compare the same to ascertain the truthfulness of the information having been provided in both the Forms and upon finding that the later Form 26 has been improved upon and even the details of the jewellery of the first respondent and his spouse has been mentioned in Form 26 dated 25.3.2019, the Returning Officer ought to have rejected the nomination paper, as there was an intentional omission not typographical error on the part of the first respondent in filing Form 26 dated 21.3.2019 which was the only Form put up for public view and uploaded on the website and not Form 26 dated 25.03.2019. In the preceding paragraph, this Court held that the non-dissemination of the affidavit in Form 26 dated 25.3.2019 through the website materially affected the election of the first respondent.

130. It can be understood that at the time of scrutiny, the Returning Officer may not be in a position to ascertain the truthfulness of the information provided, but he cannot ignore the blanks which are visible from the naked eyes and upon finding that information of substantial character, like name of the spouse, name of the dependents, details of returns of the candidate, spouse and dependents, income of the spouse, who is a Government servant, movable and immovable property and the details of non-agricultural has either been left blank or are not filled, the Returning Officer should have rejected the said nomination paper forthwith.

131. One may look this aspect from another perspective. If the very basis of the election of the returned candidate, i.e., the nomination of the candidate which is stated to be valid, is later on found to be not valid, as in the present case, the very basis and foundation for sustaining the election of the returned candidate goes. In other words, once the foundation is taken away, the election will have no basis to stand and thus will be rendered otiose. He cannot be

treated to have been elected at all. Hence, the moment there is a finding that the nomination of the returned candidate has been improperly accepted, it immediately materially affects the result of the election of the returned candidate. Accordingly, if there be any burden on the petitioner to prove that the result of the election of the returned candidate has been materially affected by improper acceptance of the nomination of the returned candidate, such a burden also gets discharged immediately. Thus, there will not be any need to prove further on the part of the petitioner that the improper acceptance of the nomination of the returned candidate has materially affected the result of the election of the returned candidate.

132. This Court is of the view that the affidavit in Form 26 filed by the first respondent suffers from the defects of substantial character. The petitioner also established that the first respondent filed affidavit in Form 26 dated 21.3.2019 along with the nomination paper submitted by him. The only uploaded affidavit in Form 26 of the first respondent is dated 21.3.2019 and while filing nomination along with the affidavit in Form 26, the first respondent has failed to follow the instructions of the Election Commission of India in relation to separate bank election expenditure. The act of the first respondent would amount to corrupt practice and therefore, it materially affected the result of the election of 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha, 2019.

133. For all the reasons stated above, the election of the first respondent is declared void under Section 100 (1) (d) (i) (iv) read with Section 100 (1)(b) of the RP Act. Accordingly, Issue Nos. 1 to 6 are answered in favour of the petitioner and against the first respondent.

Issue No.7:

134. The learned counsel for the petitioner submitted that consequent upon the declaration of the election of the first respondent is void and the votes numbering 363527 received by the first respondent will become invalid votes and since the petitioner received majority of valid votes numbering 289745, this Court could declare the petitioner as elected. He submits that the votes secured by the first respondent whose nomination has been improperly accepted and whose election liable to be set aside, stands waster and the petitioner is liable to be declared elected under Section 101 of the RP Act. In support, the learned counsel has referred to Sections 84, 98 and 101 of the RP Act.

135. The learned counsel for the petitioner submitted that having declared the election of the first respondent as void, the natural consequence in the present case would have been to declare the petitioner who is the only other remaining candidate secured highest votes next to the first respondent with valid nomination in the election for the 2-Outer Manipur (ST) Parliamentary Constituency to be elected, by default in terms of the relevant provisions of the RP Act. In support, the learned counsel placed reliance upon the following decisions:

- (i) *Konappappa Rudrappa Nagouda v. Vishwanath Reddy and another*, AIR 1969 SC 447.
- (ii) *Chandeshwar Saw v. Brij Bhushan Prasad and others*, 2020 SCC OnLine SC 89.
- (iii) *Mopuragundu Thpppeswamy v. K. Eranna Ananthapur*, 2018 SCC OnLine Hyd 413.

(iv) *Mayanglambam Rameshwar Singh v. Yengkhom Surchandra Singh and others, 2020 SCC OnLine Mani 312.*

136. The learned senior counsel for the first respondent argued that the petitioner is not entitled to be declared as elected as returned candidate in any circumstances. Further, assuming but not admitting that the Election Petition of the petitioner succeeds, the petitioner cannot be declared as election in the place of the first respondent, as there are eight candidate contesting in the 17th Lok Sabha Election, 2019, it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper to contest the election and what would have been voting pattern. The learned senior counsel urged that in the instant case it will be more difficult because the margin runs in more than 73,782 votes.

137. In order to appreciate the contention of the petitioner, it is necessary to quote Sections 84, 98 and 101 of the RP Act:

“84. Relief that may be claimed by the petitioner – A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

98. Decision of the High Court.— At the conclusion of the trial of an election petition the High Court shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election, of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected

101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.— If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

138. Section 84 of the RP Act enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. Section 101 of the RP Act speaks of the ample power to declare the petitioner as duly elected candidate, as the petitioner received majority of valid votes. Thus, the relief sought by the petitioner falls within the ambit of Sections 84 and 101 of the RP Act.

139. In *Konappa Rudrappa Nagouda* (supra), the Hon'ble Supreme Court held:

“14. We are satisfied that this appeal must succeed and the appeal is therefore allowed, the election of the first respondent is declared void. In this view of the matter, the votes cast in favour of the first respondent must be treated as thrown away. As there was no other contesting candidate we declare the appellant (election petitioner) elected to the seat from the Yadagiri constituency. The first respondent shall bear the costs of the appellant throughout.”

140. In *Chandeshwar Saw* (supra), the Hon'ble Supreme Court held as under:

“20. Accordingly, this appeal succeeds. The impugned judgment [*Brij Bhushan Prasad v. State Election Commission*, 2019 SCC OnLine Pat 2391] and order is set aside. Instead, the election case being EC No. 8 of 2016 filed by the appellant before the Election Tribunal is allowed. A declaration is issued under Section 140 of the Act that the election of Respondent 1 as returned candidate is set aside being invalid, and instead we declare the appellant-election petitioner as having been duly elected having secured highest votes amongst the contesting candidates and 95 more valid votes than that of Respondent 1 in the subject election.”

141. In *Mayanglambam Rameshwar Singh* (supra), this Court held thus:

“120. In the instant case, trial commenced on 12.6.2017 and the Election Recrimination Petition was filed on 7.8.2017, however, the same was closed as not pressed on 12.9.2017 and the order dated 12.9.2017 reads thus:

“Heard Mr. Th. Modhu, learned counsel for the applicant/successful candidate who submits that he is not pressing the application.

In view of the above submission made by the learned counsel for the applicant, the present application stands closed as not pressed. Heard also Mr. N Zequeson, learned counsel for the election petitioner.”

121. Since the order dated 12.9.2017 in Election Recrimination Petition No. 2 of 2017 attained finality, the first respondent cannot claim any right against the petitioner.

In other words, without having any prayer claimed against the petitioner, it will be erroneous for this Court to pass any order in regard to IssueNo. 7.

122. It is settled law that if the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the petitioner. In such a case, an enquiry would be held under Section 100 of the RP Act so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry declaration is made that the election of the returned candidate is void, then the Court will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate.

123. In the present case, in view of the Election Recrimination petition No. 2 of 2017 being admittedly time barred in terms of the provisions of Section 97 of the RP Act and the same having been dismissed as not pressed, no evidence against the petitioner can be introduced or raised by the first respondent qua non-disclosure of information. Thus, it can safely be concluded that the alleged materials produced by the first respondent against the petitioner in regard to Issue No. 7 is inadmissible and at the same time, the defence set forth in the written statement of the first respondent are not to be taken into account and are not helpful to the first respondent. Issue No. 7 is answered accordingly.

124. Issue No. 8:

125. Having declared the election of the First respondent as void, the natural consequence in the present case would have been to declare the only other remaining candidate With valid nomination in the election for the 37-Kakching Assembly Constituency to be elected, by default in terms of the relevant provisions of the RP Act.

126. The petitioner clearly pleaded in his petition to declare the election of the first respondent as null and void and declare him as elected candidate.

127. By placing reliance upon the following decisions, the learned counsel for the first respondent submitted that the petitioner cannot be declared as elected when there are several candidates in the election in question:

- (1) Konappa Rudrappa Nadgouda v.

Vishwanath Reddy, (1969) 2 SCR 90

- (2) Thiru John v. Returning Officer, (1977)3 SCC 540.
- (3) Prakash Khadri v. Dr. Vijaya Umar Khandra, (2002) 5 SCC 568.

128. In Konappa Rudrappa Nadgouda (supra) the Hon'ble Supreme Court held:

“12..... When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of the disqualification all the votes cast in favour of him will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.”

129. In Thiru John (supra), the Hon'ble Supreme Court held:

“54. This takes us to the next question. Should all the votes that had been polled in favour of the candidate (Shri John) who has been found by the Court to be statutorily disqualified for election, be regarded as thrown away and in consequence, the appellant Shri Subrahmanyam who secured 300 votes as against non obtained by Shri MohanaRangam be declared elected?

55. Again the answer to this question in our opinion must be in the negative. It is nobody's case that electors who voted for Shri John had at the time of election, knowledge or notice of the statutory disqualification of this candidate. On the contrary they must have been under the impression that Shri John was candidate whose nomination has been validly accepted by the Returning Officer. Had the electors noticed of Shri John's disqualification, how many of them would have voted for him and how many for the other continuing candidates, including Sarvashri Subrahmanyam and Mohana

Rangam and in that preferential order, remains a question in the realm of speculation and unpredictability.”

130. In *Prakash Khandre* (supra), the Hon'ble Supreme Court held:

“24..... As held by the Constitution Bench in *Konappa* case that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as “thrown away” only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualified to contest the election and what would have been the voting pattern. Therefore, order passed by the High Court declaring the election petitioner Dr. Vijay Kumar Khandre as elected required to be set aside.”

131. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Section 84 of the RP Act.

“84. Relief that may be claimed by the petitioner-A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

132. Section 84 of the RP Act enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. Thus, the relief sought by the petitioner falls within the ambit of Section 84 of the RP Act. The decisions relied on by the learned counsel for the first respondent is distinguishable from the facts of the instant case and therefore, the aforesaid decisions would have no help to the case of the first respondent. In the instant case, it is also admitted by the first respondent that the petitioner is the next highest candidate who secured 10503 votes. The next highest vote is 2215 got by the Communist party. Since the difference between the first

respondent and the petitioner is 630 votes, the question of notice to the voters may not arise in the given circumstances of the present case.

133. In *Konappa Rudrappa Ngouda* (supra), the Hon'ble Supreme Court held :

“We are satisfied that this appeal must succeed and the appeal is therefore allowed, the election of the first respondent is declared void. In this view of the matter, the votes cast in favour of the first respondent must be treated as thrown away. As there was no other contesting candidate we declare the appellant (election petitioner) elected to the seat from the Yadagiri constituency. The first respondent shall bear the costs of the appellant throughout.”

134. In *Chandeshwar Saw v. Brij Bhushan Prasad*, 2020 SCC OnLine SC 89, the Hon'ble Supreme Court observed as under:

“20. Accordingly, this appeal succeeds. The impugned judgment and order is set aside. Instead, the election case being E.C. No. 08/2016 filed by the appellant before the Election Tribunal is allowed. A declaration is issued under Section 140 of the Act that the election of respondent No. 1 as returned candidate is set aside being invalid, and instead we declare the appellant/election petitioner as having been duly elected having secured highest votes amongst the contesting candidates and 95 more valid votes than that of respondent No. 1 in the subject election.”

135. In *Mopuragundu Thippeswamy v. K. Eranna*, 2018 SCC OnLine Hyd 413, the High Court of Andhra Pradesh held as under:

“102. The petitioner clearly pleaded in the Election Petition to declare the election of the first respondent as null and void, and declare him as elected candidate. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Section 84 of the R.P. Act.

84. Relief that may be claimed by the petitioner-A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

103. Section 84 of the RP Act enables the petitioner to seek a

declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. The relief sought by the petitioner falls within the ambit of Section 84 of the R.P. Act.

104. As observed earlier, the first respondent got 76,601 votes and the petitioner got 61,905 votes. The first respondent was declared as elected Member of 275-Madakasira Legislative Assembly Constituency with a majority of 14,636 votes. Among all the candidates contested, the petitioner secured highest votes after the first respondent. Consequent upon the findings on Additional Issue, the petitioner is entitled to be declared as elected Member of 275-Madakasira Legislative Assembly Constituency. Accordingly, Issue No. 4 is answered in favour of the petitioner and against the first respondent.”

136. It has been pointed out by the learned counsel for the petitioner that as against the judgment of the Andhra Pradesh High Court in 2018 SCC OnLine Hyd 413, the respondent

K. Erranna, preferred Civil Appeal No. 11908 of 2018 before the Hon'ble Supreme Court and by the order dated 12.12.2018, the Civil Appeal No. 11908 of 2018 stands dismissed and he has also produced the judgment of the Hon'ble Supreme Court. Thus, judgment of the Andhra Pradesh in K. Erranna (supra) is squarely applies to the case on hand.

137. As stated supra, the first respondent got 11133 votes and the petitioner got 10503 votes. The First respondent was declared as elected member of 37-Kakching Assembly Constituency. Among all the candidates contested the petitioner secured 10503 votes after the first respondent. Consequent upon the findings that the election of the first respondent is declared as null and void, the petitioner is entitled to be declared as elected member of 37-Kakching Assembly Constituency. Issue No. 8 is answered in favour of the petitioner.”

142. In *Mopuragundu Thippeswamy (supra)*, the Telangana High Court held as under:

“102. The petitioner clearly pleaded in the Election Petition to declare the election of the first respondent as null and void, and declare him as elected candidate. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Section 84 of the R.P. Act.

84. Relief that may be claimed by the

petitioner – A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

103. Section 84 of the RP Act enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. The relief sought by the petitioner falls within the ambit of Section 84 of the R.P. Act.

104. As observed earlier, the first respondent got 76,601 votes and the petitioner got 61,905 votes. The first respondent was declared as elected Member of 275-Madakasira Legislative Assembly Constituency with a majority of 14,636 votes. Among all the candidates contested, the petitioner secured highest votes after the first respondent. Consequent upon the findings on Additional Issue, the petitioner is entitled to be declared as elected Member of 275-Madakasira Legislative Assembly Constituency. Accordingly, Issue No.4 is answered in favour of the petitioner and against the first respondent.

105. In the result, the Election Petition is allowed, setting aside the election of the first respondent as Member of 275-Madakasira Legislative Assembly Constituency in the General Elections held in the month of May, 2014 and declaring the petitioner as duly elected Member of 275-Madakasira Legislative Assembly Constituency. Both the parties are directed to bear their own costs. Miscellaneous petitions, if any pending in the Election Petition, shall stand closed.”

143. It has been pointed out by the learned counsel for the petitioner that as against the judgment of the Telangana High Court in **2018 SCC OnLineHyd 413**, the respondent K.Eranna, preferred Civil Appeal No.11908 of 2018 before the Hon'ble Supreme Court and by the order dated 12.12.2018, the Civil Appeal No.11908 of 2018 stands dismissed. Thus, judgment of the Andhra Pradesh in **K.Erranna** (supra) is squarely applies to the case on hand.

144. As stated supra, the first respondent got 363527 votes and the petitioner got 289745 votes. The next highest person secured votes is the seventh respondent i.e. 152510 votes. The first respondent was declared as elected member of 2-Outer Manipur (ST) Parliamentary Constituency in the General Election to 17th Lok Sabha, 2019. Among all the candidates contested, the petitioner secured 289745 votes after the first respondent. The difference between the petitioner and the seventh respondent is 137235 votes.

145. Though the Hon'ble Supreme Court held that where there are more than two candidates in the field, it is not possible to apply the same ratio as could be applied when there are only two candidates, in the facts and circumstances of the case and number of votes secured by the petitioner, it would be appropriate to consider that the petitioner is duly elected as member. Further, the pleadings of material facts produced by the petitioner co-relatable to

the ingredients of clause (a) or (b) of Section 101 of the RP Act to sustain the prayer (c) made in the Election Petition. In view of the fact that there were eight candidates in the fray, the claim of the petitioner to declare him as elected member cannot be denied for the reason that among all the candidates contested, the petitioner secured highest votes after the first respondent. Consequent upon the findings that the election of the first respondent is declared as null and void, the petitioner is entitled to be declared as elected member of 2-Outer Manipur (ST) Parliamentary Constituency in the General Election to 17th Lok Sabha, 2019. Accordingly, Issue No.7 is answered in favour of the petitioner.

146. In the result,

- a) *the Election Petition is allowed by declaring the election of the Respondent No. 1 as Member of 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha, 2019 as null and void;*
- b) *this Court declared that the Petitioner is duly elected as a member of 2-Outer Manipur (ST) Parliamentary Constituency;*
- c) *both the parties are directed to bear their own cost.*

JUDGE

FR/NFR

Sushil